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COMMISSION ON HUMAN RIGHTS

SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND
PROTECTION OF MINORITIES

Forty-fifth session

SUMMARY RECORD OF THE 24th MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 19 August 1993, at 10 a.m.

Chairman: Mr. EIDE

later: Mr. AL-KHASAWNEH

CONTENTS

The administration of justice and the human rights of detainees (continued)

(a) Question of the human rights of persons subjected to any form of detention or imprisonment (continued)

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GE.93-14875 (E)

CONTENTS (continued)

(b) Question of human rights and states of emergency (continued)

(c) Individualization of prosecution and penalties, and repercussions of violations of human rights on families (continued)

(d) The right to a fair trial (continued)

Independence and impartiality of the judiciary, jurors and assessors and the independence of lawyers (continued)

Review of further developments in fields with which the Sub-Commission has been concerned (continued)

The meeting was called to order at 10.20 a.m.

THE ADMINISTRATION OF JUSTICE AND THE HUMAN RIGHTS OF DETAINEES:

(a) QUESTION OF THE HUMAN RIGHTS OF PERSONS SUBJECTED TO ANY FORM OF DETENTION OR IMPRISONMENT;

(b) QUESTION OF HUMAN RIGHTS AND STATES OF EMERGENCY;

(c) INDIVIDUALIZATION OF PROSECUTION AND PENALTIES, AND REPERCUSSIONS OF VIOLATIONS OF HUMAN RIGHTS ON FAMILIES;

(d) THE RIGHT TO A FAIR TRIAL

(agenda item 10) (continued) (E/CN.4/Sub.2/1993/19-23; E/CN.4/Sub.2/1993/24 and Add.1-2; E/CN.4/Sub.2/1993/NGO/2; E/CN.4/Sub.2/1993/NGO/9; E/CN.4/Sub.2/1993/NGO/14; E/CN.4/Sub.2/1993/NGO/15)

INDEPENDENCE AND IMPARTIALITY OF THE JUDICIARY, JURORS AND ASSESSORS AND THE INDEPENDENCE OF LAWYERS (agenda item 11) (continued) (E/CN.4/Sub.2/1993/25; E/CN.4/Sub.2/1993/NGO/15)

REVIEW OF FURTHER DEVELOPMENTS IN FIELDS WITH WHICH THE SUB-COMMISSION HAS BEEN CONCERNED (agenda item 4) (continued) (E/CN.4/Sub.2/1993/2-4; E/CN.4/Sub.2/1993/6-9; E/CN.4/Sub.2/1993/10 and Corr.1-2; E/CN.4/Sub.2/1993/NGO/1; A/CONF.157/23)

1. Mr. PATTEN (National Aboriginal and Islander Legal Services Secretariat (NAILSS)) said that the independence of the judiciary and lawyers was one of the principal foundations upon which the administration of justice was based. Without it, the citizens' right to have their cases decided impartially was jeopardized and the system lost public confidence and, ultimately, its legitimacy. In that context he wished to draw attention to the situation in Australia.

2. Although there had never been a systematic examination of the sentencing practices of the courts in Australia, there was sufficient anecdotal and other evidence to support the proposition that there had been, and continued to be, discrimination against indigenous people in the administration of criminal justice. Such discrimination was particularly prevalent in respect of the magistrates courts, with which all persons charged with a criminal offence came into contact and in which 90 per cent of all criminal cases were finalized. It was not suggested that there was a concerted attempt by magistrates to practise a policy of discrimination against Aboriginal and Torres Strait Islander people. Rather, it so happened that in the selection of magistrates it was ensured that they came from a mainly conservative background and reflected the entrenched values of the dominant culture. Those values became further entrenched as they often formed close relationships with the police. For example, in many rural areas the magistrate travelled with the police prosecutor and was provided with transport by the local police. Furthermore, when magistrates were assigned to a country area for a long period of time, they associated exclusively with the non-indigenous community and quickly came to espouse its values.

3. In some States, in many rural areas where magistrates might often only visit every three months, justices of the peace had the powers of magistrates when the magistrates were not available. The justices were always from the local non-indigenous community and often lacked any legal training. In most of those rural areas Aboriginal and Torres Strait Islander people formed at least a sizeable minority of the local population. Given that situation, it was little wonder that Aboriginal and Torres Strait Islander people did not believe that magistrates were independent of the police or of the colonialist Power that they represented.

4. Magistrates were expected by the police to apply the policies of law and order. Where there was a perception by the police that a particular magistrate was "soft" on Aboriginals, protest meetings might be organized by them, usually in conjunction with the "local community", and campaigns of denigration and vilification were initiated, often with the connivance of the media. In cities there might even be a concerted attempt to transfer cases to courts where there was perceived to be a more police-friendly magistrate. Police and other vested interest groups were far more likely to attempt to carry out those policies of coercion and intimidation against magistrates than against judges, owing to the more vulnerable position of the former. Furthermore, it had been observed that Governments were less likely to offer magistrates the same level of support that they would offer judges in similar circumstances, thereby making it more likely that the tactics of intimidation would succeed.

5. The results of those practices, combined with discriminatory policing, was that Aboriginal and Torres Strait Islander people were more likely to be sent to prison, especially in cases involving juveniles. Since the establishment of the Royal Commission on Aboriginal Deaths in Custody, programmes had been introduced to heighten the awareness of magistrates and judges as to the perspectives and values of Aboriginal and Torres Strait Islander people. Those measures were welcome, but they could not be expected to provide an immediate antidote to the disease that had infected the judicial system for over 200 years.

6. In order to remove a judge from office in Australia it was generally necessary for there to be an address by both houses of the relevant State Parliament or of the Commonwealth Parliament. Those provisions were constitutionally guaranteed. Such a requirement ensured that there was a full and proper investigation as to the reasons for the removal and that an explanation was provided to the public. In order to avoid the scrutiny inherent in such a procedure, State Governments in Australia had developed a worrying trend of abolishing courts, and therefore the positions of those appointed to sit in them, and to create new courts and not appoint to them those members of the previous bench that the Government had found to be irksome or recalcitrant in some way. One of the first jurisdictions to adopt that approach had been New South Wales, where, in 1985, the Court of Petty Sessions had been abolished and a new local court structure had been established in its place. Of the over 100 magistrates from the old court, five had not been appointed to the new court and no reason for their omission had ever been provided to the public. In 1993 in Victoria, the Accident Compensation Court had been abolished and 10 of the 11 persons appointed to it had not been appointed to the new court. The Government of Victoria had

followed the example of the Federal Government. That emerging trend was disturbing because, if judges or magistrates believed that their position might be in jeopardy unless they adopted a particular approach, their independence could not be guaranteed.

7. In a submission to the Working Group on Indigenous Populations, NAILSS had detailed the violent reaction by representatives of various vested interest groups to the decision of the High Court in the Mabo case. The reaction of those groups was only to be expected, since it was normal when any advance in the rights of Aboriginal and Torres Strait Islander people, however limited, was made. What had been far more disturbing had been the violent campaign of denigration of the High Court itself, which had gone beyond vigorous debate as to the merits of the decision and had descended into attacks upon the institution itself, including the questioning of its "political motives". A situation had now been reached in which the Chief Justice of the High Court had had to defend the decision in public, an unprecedented move in the history of the Court. That those who preached law and order and who had manipulated the institutions of power for their own benefit and interest should now seek to circumvent and challenge the authority of the highest court in Australia when it had sought to recognize some limited rights for an otherwise marginalized, captive and dispossessed group was in itself ironic, but it also provided a portent of the danger ahead. If the interests of capital and conservative political power were prepared to attack the lynch-pin of the colonialist power structure when it sought to give even the limited rights involved in the Mabo case to Aboriginal and Torres Strait Islander people, there was absolutely no reason to believe that the inherent right of those people to real and effective self-determination would ever come about unless a strong and unequivocal statement of that right, together with enforcement mechanisms, was provided in international law. Consequently, NAILSS, on behalf of the Aboriginal and Torres Strait Islander people of Australia, urged the Sub-Commission to ensure that the draft declaration reflected the values and aspirations of indigenous peoples and that the latter be given an opportunity to contribute to the drafting process.

8. Mr. CHERNICHENKO said that the comments made by members of the Sub-Commission on the fourth report on the right to a fair trial prepared by Mr. Treat and himself (E/CN.4/Sub.2/1993/24 and Add.1-2) and on his working paper on the definition of gross and large-scale violations of human rights as an international crime (E/CN.4/Sub.2/1993/10) would be taken into account. He could not, however, agree with Mr. Yimer's view that there was no need for a draft declaration on the right to a fair trial because all the necessary provisions were already to be found in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. No doubt the draft declaration needed to be improved, particularly by making it more concise, but it contained many details that were not to be found in the International Covenant on Civil and Political Rights, especially with regard to trials in absentia. The adoption of a declaration was usually a preliminary step to the drafting of a treaty, but it could also be seen as an interpretation of a treaty. The Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief was a case in point. In fact, a declaration on the right to a fair trial would bring together a body of detailed principles relating to the subject.

9. The purpose of drafting an optional third protocol to the International Covenant on Civil and Political Rights was to make the right to a fair trial non-derogable even during states of emergency. Only States which supported that idea would accede to it.

10. It might not be possible for him to take into account all the comments made on his working paper on the definition of gross and large-scale violations of human rights as an international crime because if he did so he might encroach upon the work of the International Law Commission. It would be desirable to consider the creation of some kind of mechanism, but there was no need to go into details in the draft declaration.

11. Mrs. KSENTINI noted that every year the Sub-Commission was submerged by a large number of interesting reports which it did not have time to discuss in depth. Some means of rationalizing the study of reports was needed.

12. She appreciated the preliminary report on the impunity of perpetrators of violations of human rights prepared by Mr. Guissé and Mr. Joinet (E/CN.4/Sub.2/1993/6) and looked forward to subsequent versions. Of the options mentioned, she preferred option 1, since economic, social and cultural rights could not be dissociated from civil and political rights.

13. Mr. Chernichenko, in continuing his excellent work on the definition of gross and large-scale violations of human rights as an international crime, might wish to consider the possibility of defining the concept of mass-scale and systematic violations, of which no standard definition had ever been given. The only definition which she had discovered had been given by the International Law Commission, in the draft Code of Crimes against the Peace and Security of Mankind, which referred to violations of human rights "in a systematic manner or on a mass-scale". They included murder, torture, establishing or maintaining over persons a status of slavery, servitude or forced labour, persecution on social, political, racial, religious or cultural grounds in a systematic manner or on a mass-scale or deportation or forcible transfer of population. In its commentary on the draft article, the International Law Commission had observed that the common factor in all the acts constituting crimes was a serious violation of certain fundamental human rights. The systematic element related to a constant practice or to a methodical plan to carry out such violations. The mass-scale element related to the number of people affected by such violations or the entity that had been affected. Either one of those aspects - systematic or mass-scale - in any of the acts enumerated in the draft article was enough for the offence to have taken place. On the other hand, isolated acts of murder or torture did not come under the draft Code.

14. Mrs. WARZAZI said that she, too, had had very little time in which to read the numerous reports before the Sub-Commission. Perhaps the Special Rapporteurs could send photocopies to members in advance so that they could prepare themselves to discuss them in good time.

15. At present she was in a position to comment on only two reports. The first was Mrs. Ksentini's report on human rights and the environment (E/CN.4/Sub.2/1993/7), which had been prepared in difficult circumstances. One of its merits was that it put an end to a dispute which had arisen at the

General Assembly, where the delegation of Mongolia had submitted a draft resolution on environmental rights, consideration of which had had to be postponed owing to the lack of a consensus.

16. It was now clear that the environment and the duty to provide everyone with healthy living conditions were closely connected with human rights. In 1948 the Universal Declaration of Human Rights had already proclaimed the need to provide minimum living conditions and to protect life. An unhealthy environment constituted a serious threat to the survival of mankind in a more or less distant future and was already affecting the health, welfare and dignity of the large numbers of the world's people who lived in slums, who were far from sources of drinking water, who breathed polluted air or were poisoned by toxic wastes. Protection of the environment did not only entail responsibility to manage the planet for the benefit of future generations but also the obligation of both Governments and the governed to respect the life, health and dignity of all. The Stockholm Declaration of 1972 had set the pace in so far as it had placed environmental issues in a human rights context by declaring that "Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being". From that followed an automatic link with the right to development.

17. More and more Governments were undertaking to protect the environment in order to secure the life and health of their nationals. They had also been led to recognize the right to information, the right to self-protection against harmful activities, the right of appeal, and the right to compensation, while requiring that all population groups should also assume their share of responsibility for respect for a healthy and balanced environment, thereby restoring a respect for others that individualism, selfishness and modernity had almost consigned to oblivion.

18. The Special Rapporteur had made several recommendations which she supported, particularly the recommendation concerning the importance which all human rights bodies and working groups should accord to environmental issues and the need to establish guidelines for the coordination of their activities. In that connection the presence of the Special Rapporteur at the next meeting of chairpersons of human rights bodies would be very useful. The recommendations should also include an appeal to international financial institutions, which had recently appeared to take an interest in certain human rights problems and which were in a position to provide assistance in the implementation of economic and social rights, without which little progress would be made in protecting the environment and creating better living conditions for all.

19. The second report on which she was in a position to comment was the report on discrimination against HIV-infected people or people with AIDS prepared by Mr. Varela Quirós (E/CN.4/Sub.2/1993/7). The problem of AIDS was particularly disturbing because, after 10 years of research, science was far from identifying a treatment for the disease, which by 1993 had affected 13 million persons. Research workers appeared to be baffled.

20. The Special Rapporteur had identified all the problems that arose for victims of AIDS. He had not, however, mentioned the disastrous consequences

of the pandemic on the stability of certain social groups, particularly in Africa, where sometimes 50 per cent of the social, economic and political elites disappeared and Governments were quite unable to cope with the economic burden of AIDS. In that connection the right to information must be secured for everyone, since no great expenditure was involved and health information and education were particularly effective in making people aware of the problem and consequently in preventing the spread of the disease. In that connection, solidarity could be assimilated to respect for human rights. Africa needed solidarity, since, according to WHO, 7 million adults had been already infected by the virus and 5 to 10 million children would be born in that condition. Moreover, it was expected that there would be some 10 million orphans in Sub-Saharan Africa. A similar situation was expected in the early twenty-first century in Asia and Latin America. It was astonishing that no cure had been found for AIDS, and she wondered whether that was due to greed and the exploitation of the disease for financial purposes.

21. Another factor to which not enough attention appeared to have been given was the importance of strengthening the family as an institution. Urbanization, industrialization, the spread of non-traditional values through the media and the decline of the influence and support of the family offered adolescents a broad choice of behaviour, some forms of which could be dangerous. Thirty per cent of the world's population was between 10 and 24 years of age. Strengthening the family and promoting moral values in the media and in schools would help to prevent AIDS and to protect the rights of all those exposed to it. The Special Rapporteur's recommendations to protect the victims of AIDS from any discrimination or violation of their rights were welcome, but she hoped that her own remarks would also be taken into account.

22. The CHAIRMAN said that he would ask the Secretariat to consider the feasibility of distributing mimeographed copies of the unedited reports of Special Rapporteurs as soon as they became available so that members would have more time to study them.

23. Mr. KHALIL, speaking on agenda item 4, agreed with the comments of Mrs. Warzazi on the second progress report of the Special Rapporteur on human rights and the environment (E/CN.4/Sub.2/1993/7). The right to a healthy environment was complementary to all other human rights. He welcomed the additional information which the report contained on the evolution of national legislation and on developments in court cases with environmental implications in an number of countries.

24. The Special Rapporteur had described the problems, at both national and regional levels, which she had encountered in preparing the report. The report had also drawn attention to the difficulties faced by individuals in obtaining recourse to international bodies. Valuable information had been included regarding decisions and comments of European human rights bodies and the continuing involvement of the Inter-American Commission on Human Rights in human rights cases with environmental facets.

25. The very authoritative sources quoted by the Special Rapporteur had demonstrated clearly that the impact of environmental degradation on the enjoyment of human rights was a matter of concern not only to the developed

countries but also to the whole of mankind. It was clear that action, at both the national and international levels, was needed. The right to a healthy environment must be guaranteed for future generations.

26. The Special Rapporteur had also pointed out that the European Court of Human Rights, in several cases, had legitimized environmental restrictions on the use of private property. There was increasing awareness that not only States but also industry and social bodies must respect the environment.

27. He agreed with the Special Rapporteur that it was necessary to look beyond environmental concerns in order to take developmental aspects into account. The right to development must clearly be exercised in an effective and equitable way which would also emphasize environmental considerations. Achievement of that balance would require solidarity between the members of the international community.

28. He supported the recommendations contained in the second progress report and looked forward to reading the final report at the next session of the Sub-Commission.

29. Mr. DESPUOY said that he wished to draw attention to some ideas of particular importance which had emerged from studies submitted under agenda items 4, 10 and 11.

30. The Special Rapporteur on discrimination against HIV-infected people or peoples with AIDS, in his earlier reports, had drawn attention to the dimension and complexity of the human rights aspects of the virus. The final report (E/CN.4/Sub.2/1993/9) was unique in that it was the only paper which he himself had seen that indicated the close link between human rights and the virus so clearly. There was accordingly a need for greater coordination between human rights bodies and organizations dealing with the AIDS problem.

31. The report of the Special Rapporteur on human rights and the environment (E/CN.4/Sub.2/1993/7) raised two points. The first related to the problem of responsibility for ecological crimes; related legislation was now appearing in national legal texts. Important economic interests were involved in that issue, however, and defenders of the environment were being persecuted in a number of countries. That aspect could become a major issue in the future.

32. His second point related to the inclusion of ecological elements in the programmes of some United Nations agencies, UNDP in particular. It might therefore be useful to study the interaction of ecological and developmental aspects in country programmes. The experience of Paraguay had been very encouraging as the environmental aspect had been featured prominently in the country's economic programmes. The World Bank was also showing increasing interest in the environmental aspects of its programmes. Those developments represented a new perception in programme implementation.

33. The problems of supervision and continuity would however be decisive. The right machinery must be found. The Special Rapporteur might wish to consider recommending that the governing body of each United Nations agency should develop proposals relating to the environmental aspects of its

programmes, for consideration in 1994. An ombudsman might be appointed to coordinate the work of the different agencies. The next step would be to initiate close coordination with other interested organizations.

34. The fourth report prepared by Mr. Chernichenko and Mr. Treat on the right to a fair trial (E/CN.4/Sub.2/1993/24) represented an encyclopedic work for future reference. A vital point concerned the identification of the intangible rights which were involved in the right to a fair trial. It would be important to work out an acceptable basis for universal reference. In that connection he would like to ask Mr. Chernichenko if it would be possible to compile a list of intangible rights which would be affected by states of exception or emergency. It might be useful if discussions on article 4 of the International Convenant on Civil and Political Rights could be arranged between the Sub-Commission's experts and representatives of the Commission on Human Rights and other bodies.

35. Referring to Mr. van Boven's excellent final report (E/CN.4/Sub.2/1993/8), it was his view that the issues of compensation and impunity should not be linked; they were two different things and should not therefore be confused.

36. Compensation was a complex issue as it involved not only a sanction against the perpetrator of the violation but also the important issue of making victims aware that sanctions had been applied. That had not been the case in the past in Latin America where flagrant violations of human rights accompanied by impunity of the perpetrators had resulted in irreparable damage to the victims and also to society. He believed that the measures adopted in many countries with a view to compensating victims should reflect that aspect. In Argentina for example the issue of disappearances had been a very serious matter. The children of disappeared persons had been excused from military service during the 1980s and that measure had been of enormous value in the eyes of the public. Compensation had been awarded to those detained by presidential order and the six commanders had been tried in military courts. The repercussions on both the commanders and society had been enormous. It had become possible to say that the people of Argentina collectively had faced up to the problem of disappeared persons. The need for truth in public affairs had also been emphasized.

37. Referring to Mr. Joinet's report on the independence of judges (E/CN.4/Sub.2/1993/25), he would like to point out that, contrary to past practice in many Latin American countries, Paraguay now had a public prosecutor who was independent of the executive. The institution of public prosecutor was in fact becoming more autonomous throughout the continent and had become a safeguard for the maintenance of independence from the executive power. In Guatemala it had been possible for a former public prosecutor to become President. Those developments indicated that the judiciary was gradually assuming a new role in Latin America and was making a significant contribution to democratic progress and to replacement of the former practice of changing Government by coup d'état.

38. Mr. BARAHONA (Observer for Honduras), speaking on agenda item 10, said that Honduras, like any other democratic country, based its social, political and economic development on respect for the independence and interrelationship of the three powers which constituted the structure of the State.

39. The independence of the judicial power was based on the fact that judges and magistrates could not be removed from office and were accordingly able to judge cases without any form of interference. Wishing to enhance the quality of the administration of justice, the Government of Honduras had created the so-called "Legal School", the primary purpose of which was to train and select staff members exercising functions in various courts. In terms of the administration of justice, particularly in the rural areas, the results had been excellent. The Office of de Oficio Defenders had also been set up and courts lacking sufficient staff had been strengthened; in addition a supernumerary judge had been appointed.

40. Recently the Legal School, with the assistance of the United Nations Latin American Institute for the Prevention of Crime and Treatment of Offenders had prepared a study on the administration of justice by justices of the peace, particularly in the rural area; the purpose of the study was to develop guidelines for justices of the peace; results had been excellent.

41. On the issue of the human rights of detainees, a distinction must be made between a detainee and a defendant, as the conditions of detention of the two were different. The former case related to a citizen held in preventive custody pursuant to an order of a competent authority, with certain exceptions.

42. A person thus deprived of his freedom must not be held incommunicado for more than 24 hours and adequate proof against him must be submitted to the competent court. If the time limit was exceeded, anybody could request the remedy of habeas corpus or personal appearance on his behalf and the police were required to comply on presentation of the document. Abuse or torture during detention would lead to criminal charges against those responsible and the immediate discharge of the person detained.

43. In the case of a person imprisoned as a result of a formal accusation submitted to the competent court, a period of six days was permitted for investigation and, in the event of a presumption of criminal responsibility, an order for imprisonment would be issued thus starting the criminal proceeding. If there were no definite grounds for suspecting a crime, the person detained would be set at liberty.

44. During criminal procedures, the accused enjoyed the right of defence and was presumed innocent until proven guilty. The detainee could chose a private defence lawyer or be provided with an assigned counsel, or both if necessary.

45. During his detention or once he had been sentenced, the accused was guaranteed legal protection against maltreatment which would violate his moral or physical integrity. In that regard, the person responsible for the penal establishment, whose functions were regulated by a special act providing for reforms in such establishments, and by the Act on Rehabilitation of Offenders, could intervene directly.

46. With a view to reducing the prison population, the provision of pre-trial release had been introduced into penal legislation. Such release was subject to an assessment of whether or not such exceptional proceedings would be in the interest of the accused.

47. It was safe to say that under the reformed judicial and penitentiary system, persons, who for whatever reason had broken the law, enjoyed the full range of guarantees established by the Constitution for such cases.

48. With regard to human rights during states of emergency, certain constitutional rights were limited, although not disregarded completely, for reasons of State security. In Honduras, although certain rights had been limited, there had been no cases of violations of other rights of the person even in the event of unwarranted coups d'état which had plagued Latin America in the past, nor during situations of national emergency caused by natural phenomena.

49. Mr. Al-Khasawneh took the Chair.

50. Mr. AKTAN (Observer for Turkey) said that an important reform had been introduced in the field of criminal procedure in Turkey. Along with the reform, many new provisions relating to the Act on State Security Courts, Act on the State of Emergency, Act on Combating Terrorism and the Act on Duties and Powers of the Police had also been amended. He expressed thanks to Mr. Joinet who had summarized the reform in a concise and objective manner in his report on the independence of the judiciary (E/CN.4/Sub.2/1993/25). However, unfortunately, the reform had been overlooked in the report which had been prepared by Mr. Chernichenko and Mr. Treat (E/CN.4/Sub.2/1993/24). The paragraph in the report on Turkey could not be regarded as accurate and complete unless it contained at least a brief reference to the reform.

51. Speaking under agenda items 10 and 11, he said that a state of emergency was usually resorted to in order to deal with a major breakdown of law and order caused by armed groups.

52. Governments could not derogate from the internationally-defined set of fundamental human rights and freedoms in their fight against armed groups. In that respect, they had contractual obligations and were accountable for any subsequent breach of them. Conversely, Governments were authorized to repress armed groups while respecting non-derogable rights. In principle, the international human rights community was supposed to refrain from passing judgement on who was right and who was wrong in a conflict. In reality, neither countries nor international organizations where they were represented, nor NGOs were disinterested parties in such a situation. They manifested their sympathies by way of criticizing human rights violations of one party and condoning those of another.

53. According to a well-established pattern, most Western NGOs supported the struggles of ethnic armed groups and condoned their violations. Those NGOs appeared convinced that ethnic terrorism was a response, perhaps painful, violent and costly, but an unavoidable, even necessary response to prior government repression. In their views, once Governments had learned to grant

and respect ethnic rights and freedoms, terrorism would come to a natural end. In any case, the gross violations committed by States which amounted to "State terrorism" should cease in the first place.

54. With regard to issues related to terrorism, general wars, civil wars, revolutionary wars, wars of national liberation, resistance movements against foreign occupiers, insurrections and mob violence had all been accompanied by terror. However, they could not be called terrorism.

55. Terrorism was a sub-State violence perpetrated by a limited number of individuals against the State. An armed group which consistently resorted to terrorist acts, methods and practices over a reasonably long period of time could be qualified as terrorists.

56. In an attempt to avoid calling a group "terrorist", the word guerrilla was sometimes used. According to Webster's Dictionary, a guerrilla was someone who carried on an irregular war in connection with a regular war waged by a foreign power. Therefore, a guerrilla war should not be confused with an ethnic terrorist conflict whose parties were the nationals of the same country. The fact that the guerrilla force could be larger than the average terrorist group did not cleanse the guerrilla from the label of terrorist, for the criterion was not the size, but the extent to which a group resorted to terrorism.

57. Random attacks on innocent civilians were the most important component of terrorism. The main purpose of terror was to induce fear, panic and shock in society. The media gave higher profile to shocking news. The element of random attack terrorized the public and undermined political order.

58. There had never been clean forms of terrorism. But if one had to make a historical comparison between the anarchists and revolutionaries of the late nineteenth and early twentieth centuries and present-day terrorists, one could conclude that there had been a radical deterioration in terrorist ethics, so to speak. New brands of terrorists had little in common with their idealistic, naive, poor, anonymous, amateur and self-sacrificing predecessors. Present-day terrorists included narco-terrorists, very rich ones, terrorists who were sponsored by other States as a mode of warfare by proxy, indeed simply as a substitute warfare, terrorists who ran expensive operations, employing and paying large numbers of militants, professional terrorists who had been reared and commissioned by foreign Powers, and ethnic terrorists killing mostly the people in whose name they claimed to fight.

59. As paradoxical as it might sound, government repression on an ethnic group was not a necessary condition or the cause of terrorism. If government repression were as large-scale and violent as had been alleged by some NGOs, mass insurrections rather than a limited terrorist response would have risen up against those governments.

60. The only political context in which terrorism had not happened was in truly oppressive regimes and totalitarian States where terrorism might perhaps have been morally justified. Historically, terrorism had almost always emerged in the declining and dissolution phase of the multi-ethnic and multi-religious empires, in the democratization process of States, or simply in

in democracies. The causes of terrorism in those contexts were not obvious. Frequently the path of terrorism was chosen even before other political options had been tried.

61. Socio-economic grievances did not necessarily lead to terrorism either, for terrorism occurred both in the context of economic depression or underdevelopment and economic prosperity.

62. In short, the connection between terrorism and objective factors was tenuous. There was a great deal of terrorism without injustice and oppression and a great deal of oppression without terrorism.

63. The claim that terrorism happened in countries where violence was embedded in the political culture was tendentious, for all political cultures were predisposed to violence which emerged at various periods in their history.

64. The role of leadership was crucial in ethnic terrorism. If the presence or absence of one leader played a crucial role in the Russian revolution of 1917, or in the rise of fascism in Europe, how much greater was the role of "accident" in the emergence of a terrorist leader. The personal motivation and intentions of individual leaders could have an extraordinary potential for destructive or the constructive shape of events, and it was upon the reservoir of positive and negative emotions that leaders played when they sought to mobilize the populace. Ethno-nationalist leaders had a seemingly endless store of hatred, fear and desire for the redress of historical hurts and grievances between ethnic groups. The leader of an ethnic terrorist group was the one who did not perceive the sources of violence in his group, instead concentrated on his group's victimization by the violence of others and tried to mobilize his followers for a new aggression to redress past wrongs and to strengthen the ethnic identity on the basis of killing "the other".

65. Unlike ethnic groups which may struggle for cultural, linguistic and religious rights, ethnic terrorist did not aspire to anything less than independence within a given land. Therefore, granting ethnic rights did not lead to a decline and eventual disappearance of terrorism. When the terrorist group threatened the majority's territorial integrity and political unity, the struggle turned into a zero-sum-gain, whence its violence. The ethnic terrorist enterprise ran into insurmountable difficulties in the sense that ethnic groups had largely intermingled over the territory of the country and the delineation of a land on the basis of ethnicity required an extremely painful ethnic cleansing, as could be seen in Bosnia and Herzegovina.

66. Thus far, no terrorist group had succeeded in its goals. Even if it was doomed to failure, terrorism had an innate tendency to continue. To succeed in achieving its espoused cause would threaten the goal of survival. It had to be successful enough in its terrorist acts to perpetuate itself, but it should not be so successful that it would put itself out of business.

67. The fact that ethnic terrorists rebelled against the State (paternal symbol) to dismember a piece of land (maternal symbol) turned the terrorist into a guilt-ridden regressive undertaking. As a result of that situation, also, terrorists did not wish to attain success. Success unconsciously meant

the realization of the goal that engendered guilt-feelings in the first place. Therefore they feared such success. To redeem themselves they unconsciously looked for punishment from the political authority. The foolish mistakes they always made testified to that fact. Religious, fundamentalist terrorists did not suffer feelings of guilt because of their faith. Hence, they remained at least partly outside the scope of such an analysis.

68. Despite those pathological characteristics of terrorism, it was surprising to see that there were supporters of terrorism, along with its more understandable opponents. The question arose of how some intelligent people could defend terrorism.

69. An experienced psychoanalyst drew a parallel between reactions caused by patients in a clinical setting and by terrorists in national and international contexts. When a hospitalized patient presented one side of his character to certain staff members and the other side to others, that often caused the staff to take highly polarized positions regarding the patient. If left unrecognized and unresolved, projective identification often led both in clinical settings and political arenas to a regressive and polarizing group process. Then a confused response to terrorism occurred. That served to enhance the feelings of justification and victimization of the terrorist.

70. That situation was occurring in some western human rights circles. The sympathies of some NGOs with ethnic groups could be explained as an unexpected outcome of the European integration process.

71. The purpose of analysing NGO attitudes was not to discourage or deter them from criticizing human rights violations and their perpetrators. On the contrary, if they recognized and resolved the psychological mechanisms at work in them, they could more objectively and soundly develop and direct their critical faculties.

72. Mrs. de CASTRO-MULLER (Observer for the Philippines), speaking on agenda items 10 and 11, said that she wished to inform the Sub-Commission of the progress made in the Philippines in the peace process and national reconciliation programme which had been initiated by the present Government.

73. In the realization that only through a comprehensive programme of peace and reconciliation could national progress be achieved, the Philippine Government had on 1 September 1992 set up the National Unification Commission to pursue a viable general amnesty and peace process that would lead to a just, comprehensive and lasting peace in the country.

74. The national peace process was community-based and sought to establish a genuinely pluralistic political society where all individuals and groups could exercise their rights and liberties guaranteed by law and enjoy a free and fair electoral system.

75. Human rights and international humanitarian law had been essential components of the substantive agenda of the Commission in its dialogue with rebel groups. Such dialogue had led to understandings with rebels on the start of negotiations on the peaceful resolution of conflicts. Parallel to the peace efforts, measures had been taken which aimed at building trust and

confidence in the Government's sincerity in pursuing comprehensive peace. Measures included the repeal of the Republic Act 1700 and the immediate release of persons charged or convicted under such legislation. Amnesties had been granted under proclamation No. 10 since March 1993 and the bail, release or pardon of detained or convicted political offenders and military rebels had been granted.

76. Such government initiatives have been reinforced by the activities of the Philippine Commission on Human Rights (PCHR) which investigated and made recommendations to the proper agency for the prosecution of violators of human rights. At the same time, the PCHR pursued its principle mission of education and proper human rights guidance. The PCHR also undertook services and programmes for the victims of human rights violations, through its investigation office which included a quick-reaction team. Its legal office provided immediate services to victims, and monitored the progress of cases which had been filed. Financial assistance, prison visits and a witness-protection programme provided a temporary remedy and security to the families of victims.

77. Statistics showed a general decrease of 36 per cent in reports on human rights violations between 1988 and 1992. While the PCHR's power to investigate was limited to all forms of violations, including civil and political rights, records showed that 32 per cent of the complaints constituted violations of socio-economic rights.

78. The medium-term development plan for 1993-1998 was devoted to strengthening the Government's capacity to achieve its human development aim through streamlining structures and operations and improving implementation capacities. The plan's main strategies included pursuing national unification and reconciliation; improving institutional and professional capabilities of crime-prevention agencies, upgrading the professional standards of police and military personnel; continuing reforms to speed up the dispensation of justice; and strengthening the organizational efficiency of agencies involved in the administration of justice.

79. The package of measures undertaken by the Government testified to its commitment to and pursuit of the promotion and protection of human rights.

80. As in the past, it was hoped that the objectives of such policies and strategies would be achieved in full cooperation with NGOs. NGOs were partners in the Philippines in the implementation of such programmes.

81. For that reason, very strong exception had been taken to the continued reference to "militarization" and "civil war" in attacks made before the Sub-Commission by one NGO based outside the country. The Government's moves and initiatives belied those irresponsible accusations, which furthermore hindered rather than assisted the ongoing reconciliation process.

82. The Philippines hoped for open dialogue with NGOs in the same manner that the Government was presently conducting open consultations with the various factions that made up rebel movements in the country.

83. Mrs. GALVIS (Observer for Columbia) speaking on agenda items 10 and 11 said that one of the concerns of the Government of Columbia was to strengthen the system of justice in order to combat impunity and to guarantee the principle of the administration of speedy justice, in particular with regard to violations of human rights.

84. To that end, the new Constitution included measures to strengthen the administration of justice and define crimes using constitutional principles as a basis.

85. The inquisitorial system had been in place in Columbia since the Penal Code was overhauled in 1936 and until it became clear that it was inappropriate for combating the various forms of crime that had emerged. For that reason, the new Constitution had opted for the adversarial system and had set up the Office of the Attorney-General of the Nation responsible for investigating crimes and bringing suspects before the competent courts. The Office could also take security and other measures in order to secure the presence of wrongdoers before the judicial authorities.

86. The Supreme Council of the Judicature had been set up and was responsible for administering the legal profession, monitoring the performance of legal associations and practices, settling disputes with regard to competence, monitoring the conduct of legal officials and lawyers and punishing any malpractice. It had also been set up with a view to guaranteeing the autonomy of the Judiciary in administrative and professional terms. The Council was also involved in appointing officials working in the administration of justice by compiling lists of suitable candidates which were then passed on to the authorities to make the final decision.

87. With a view to strengthening the investigative capacity of the State, intensive training programmes for members of the Technical Corps of the judicial police had been held and measures had been taken to improve criminal investigations.

88. The Office of the Attorney-General of the Nation was responsible for directing and coordinating the judicial police, and special Permanent Units had also been set up and were run by its legal advisers, to improve efficiency in dealing with complaints and undertaking investigations promptly. The Units had greatly helped to relieve pressure in the criminal justice system.

89. Furthermore, measures had been taken to protect the identity of judges, a fund for the Security of the Judiciary had been set up, measures taken to protect witnesses and there had been a considerable rise in the remuneration of persons working in the legal system and of officials of the Office of the Attorney-General of the Nation.

90. A bill was currently before the Congress of the Republic on enforced disappearances which gave a full description of that crime and provided for a penalty of 25 years' imprisonment as well as a ruling on imprescriptibility. The Office of the Attorney-General had also set up a National Network of Disappeared Persons and the Special Investigation Branch of the Office of the Attorney-General had been transformed into a quick reaction team to deal with reports of disappearances.

91. Measures had recently been taken to reform the National Police. The Government had set up a national committee to consider reforms which emphasized the preventive and civil functions of the Police by modifying its internal structure, setting up machinery for the participation of the public in monitoring the way the Police carried out its functions and creating a National Police Commissioner, whose authority would be equal to that of the magistrates of the Supreme Court of Justice.

92. Measures had also been taken to dismantle paramilitary groups and other organizations which operated outside the law, such as bands of hired killers and to track down persons who either encouraged, financed or trained those groups or their members.

93. The success of those measures had been reflected in the decline in impunity and the increased efficiency of judicial institutions, as stated in the report submitted by the Office of the Attorney-General of the Nation which pointed out that since its inception in 1992, a total of 318,167 complaints had been received and 189,564 investigations of various forms had been carried out.

94. Her delegation welcomed the report by Mr. Chernichenko and Mr. Treat (E/CN.4/Sub.2/1993/24) on the right to a fair trial, the report submitted by Mr. van Boven on the right to restitution, compensation and rehabilitation for victims of gross violations of human rights and fundamental freedoms (E/CN.4/Sub.2/1993/8) and the report on impunity of perpetrators of human rights violations submitted by Mr. Guissé and Mr. Joinet (E/CN.4/Sub.2/1993/6). The latter report was of particular interest as it provided a new slant on the question and deserved careful consideration in view of its implications for further development of the issue of impunity and for the enjoyment for human rights in general.

95. It should be noted that paragraph 9 (b) of the report mentioned the existence of agents other than the State who violated human rights. That theory had been borne out in Colombia in numerous cases which had been brought before the Office of the Attorney-General of the Nation involving members of guerrilla forces or drug traffickers. The Sub-Commission might wish to explore that aspect. The Inter-American Commission on Human Rights had discussed that problem and might also act as a regional forum for further consideration of the issue. The subject was dealt with from another perspective in the working paper submitted by Mr. Chernichenko on the definition of gross and large-scale violations of human rights as an international crime (E/CN.4/Sub.2/1993/10). The working paper provided basic elements for further consideration of perpetrators of human rights violations by the definition of the persons likely to commit crimes against the peace and security of mankind.

96. The report by Mr. Guissé and Mr. Joinet (E/CN.4/Sub.2/1993/6) also made a valuable contribution to the issue of impunity in economic, social and cultural rights. Paragraphs 10, 11 and 12 indicated some guidelines for studying that kind of impunity. However, it would be appropriate to begin with the nature of economic, social and cultural rights or the absence of a definition of the juridical nature of those rights.

97. The fact that those rights could not be enforced by law meant that there were no national or international courts for dealing with their non-observance and that in turn meant that it was almost impossible to ascertain State responsibility. As the report suggested, cases involving, for instance, illicit enrichment, misappropriation of funds intended for the realization of those rights and other "white-collar" offences which were punishable by law in most democratic States could be mentioned, but however interesting and necessary such an approach might be in extending the field of application of impunity, it would not cover any treatment of the problem in the sphere of economic, social and cultural rights itself.

98. In conclusion, the importance of civil society's participation in the fight against impunity should be stressed. Her delegation welcomed the statements contained in the report and wished to add that they also covered a vast range of activities such as the enormous contribution of civil society to the success of investigations, the prevention of bribes and threats and the strengthening of national justice institutions. Her delegation would therefore like to request the authors of the report to look in subsequent reports at the causes of impunity which affected the administration of justice at the national level.

99. U TIN KYAW HLAING (Observer for Myanmar), making a statement equivalent to the right of reply on agenda item 10, said that concern had been expressed about detainees in Myanmar. In accordance with Declaration No. 11/92 issued by the State Law and Order Restoration Council, detainees against whom action had been taken under the law and who no longer posed a threat to national security had been and were being released. Allegations based on unfounded rumours had been made about the conditions of the detainees. In early April 1993, two former United States Congressmen had been allowed to see five prominent detainees at the Insein Jail. Local and foreign media had reported on the event and quoted the visiting ex-Congressmen as saying that the detainees were in good health and that they had been given enough time to meet them and talk to them freely. In the larger interest of the country, certain individuals were still under restraint.

100. The political and economic systems of Myanmar were undergoing a transformation that must be seen in the context of the recent past and present. A chronicle of the political events leading to the unprecedented trauma which had befallen Myanmar in the latter part of 1988 had been submitted to the Sub-Commission. A state of emergency had been proclaimed in July 1988 and lifted in August 1988. Law and order and peace and tranquillity had returned to Myanmar. All the martial law orders which had been in force since July 1989 had been totally revoked in September 1992.

101. He wished to stress that there was no persecution either on religious or ethnic grounds against any person in Myanmar. The Commission on Human Rights Independent Expert on Myanmar had demolished those malicious allegations when she had referred to the total absence of discrimination based on religion.

102. His country had learnt from past political history that a State constitution based on democratic principles and the universal values of justice, liberty and equality was vital for Myanmar to remain united, whole and strong. In other words, the constitution must reflect the wishes of the

people, in particular those of all the national racial groups which constituted the Union. The main task of the National Convention currently taking place in Myanmar was to lay down basic principles to be included in the constitution. Representatives from all walks of life and all the national racial groups were taking part in the deliberations at the Convention, which were free and robust.

103. The members of the Sub-Commission were aware of the extensive and detailed resolution on Myanmar adopted by the Commission on Human Rights (1993/73). Observers who might not be conversant with the contemporary history of Myanmar could be sceptical, but those who were more detached and better acquainted with the situation prevailing in the country would understand it better. His delegation requested those people to help bring round those members of the Sub-Commission who might remain sceptical.

104. In conclusion, he wished to draw the attention of the Sub-Commission to the ongoing process of cooperation and dialogue between the Commission on Human Rights and Myanmar, and requested them to help to maintain and promote that process.

105. Mr. MIRCEA (Observer for Romania) speaking on agenda items 10 and 11, said, with regard to the note by the Secretary-General concerning the submission of information pursuant to Sub-Commission resolution 7 (XXVII) (E/CN.4/Sub.2/1993/19), that his delegation was of the opinion that the Secretary-General should continue to transmit reports to the Sub-Commission so that it might consider the question of the human rights of persons subjected to any form of detention or imprisonment. Commission on Human Rights resolution 1993/41 enabled the Sub-Commission to look again at the practical utility of that kind of report and his delegation believed that it should respond in a positive way with specific proposals containing ways and means of obtaining a greater amount of plausible and verifiable information on the subject and to use that information in an effective way in the interests of detainees and prisoners. That was particularly important in the case of persons held by self-styled authorities who received support, including military assistance, from abroad.

106. His delegation also considered that the Sub-Commission should look at ways of benefiting further from the work of other international organizations, in particular those concerned with crime prevention. The analyses and proposals made by those bodies at the 1993 Economic and Social Council substantive session deserved to be taken into consideration. The Sub-Commission could also enhance its work through a dialogue with those bodies particularly in the context of the preparation of international events such as the Ninth United Nations Congress on the Prevention of Crime and Treatment of Offenders.

107. With reference to the note by the Secretary-General contained in document E/CN.4/Sub.2/1993/20 his delegation considered that the preparations for the 1994 meeting of experts on the application of international standards concerning the human rights of detained juveniles should be followed with the utmost attention.

108. Democratic Romania was aware of the importance of the smooth administration of justice in a state of law and therefore its new Constitution, which had entered into force on 8 December 1991, contained the following constitutional principles: the irremovability of judges in order to guarantee their independence; a prohibition of the establishment of ad hoc tribunals; the incompatibility between the function of judges and their membership of political parties or their holding any other public position.

109. The Constitution itself guaranteed, inter alia, equality before the law, the prohibition of torture and any inhuman or degrading punishment and treatment, the presumption of innocence, the right to an interpreter for Romanian nationals belonging to national minorities and other persons who did not understand or speak Romanian, public judicial proceedings, the right to appeal against judicial decisions and the right to compensation for persons whose rights had been infringed by State authorities, including judicial error in criminal proceedings. The Act on the Organization of the Judicial System, which had come into force on 1 July 1993, reintroduced courts of appeal and established the Higher Council of the Magistrature, among whose tasks were the submission of nominations of judges and prosecutors to the President of Romania, the validation of examinations of magistrates, the decisions concerning their promotion, transfer and suspension and the role of disciplinary council for judges. The Act reaffirmed the separation of the Judiciary from the other powers of the State and confirmed the general competence of judicial bodies.

110. The powers of the courts had been increased to enable them, for instance, to register political parties as legal persons, thus facilitating the active existence of political pluralism, to decide on collective labour disputes and to exercise judicial control over the activities of the Civil Service.

111. Lawyers had regained their independence and had the right to organize themselves according to the principle of professional autonomy.

112. Criminal legislation had also been the subject of far-reaching changes. For instance, as far as pre-trial detention was concerned, the family of persons remanded in custody must be notified of their situation within 24 hours and persons remanded in custody could apply to the court to obtain the cancellation of that measure and to be brought before a judge. In order to guarantee the right to a defence, judicial bodies were required to guarantee accused persons the right to be assisted by a defence counsel from the beginning of legal proceedings before making their first statement.

113. Although there was still a great deal to do, particularly with regard to the practical running of the legislative and administrative structure that had been set up, his delegation considered that solid foundations for that end had already been laid.

114. Mr. RODRIGO (Observer for Sri Lanka), speaking on items 10 (b) and 11, said that, as stated in document E/CN.4/Sub.2/1993/23, the state of emergency proclaimed in Sri Lanka in May 1983 had been raised in January 1989 but in the face of escalating acts of brutal terrorism it had been proclaimed once more in June 1989. The Constitution of Sri Lanka guaranteed the fundamental rights

of its citizens and those fundamental rights were very similar to those recognized by the International Covenant on Civil and Political Rights, to which Sri Lanka had acceded.

115. It was against that background that he wished to address the question of human rights in the state of emergency in Sri Lanka. The President was empowered to proclaim a state of emergency and to promulgate emergency regulations to deal with situations which threatened national security. When proclaimed, the state of emergency was required to be approved by Parliament within 14 days and thereafter every 30 days if the emergency was to be extended. Except for measures relating to detention, all the other measures authorized by the emergency regulations did not entail a derogation from Sri Lanka's obligations under the International Covenant on Civil and Political Rights. The validation of those measures through emergency regulations was for the reason that they were intended to be temporary measures.

116. With regard to the powers of detention contained in the emergency regulations, the validity of such detention was reviewable by the Supreme Court by way of an application for the infringement of a fundamental right or by the court of appeal or the high court in a writ of habeas corpus. In view of the findings set out in paragraph 22 of document E/CN.4/Sub.2/1993/22/Add.2, he wished to clarify the position of writs of habeas corpus in Sri Lanka. Any person could invoke the jurisdiction of the court of appeal or a high court by way of petition and affidavit. The detaining authority was then required to justify the legality of the detention by supplying to the court the reasons for the detention. The mere denial of arrest by the authorities would not by itself deny an applicant the relief afforded by writ of habeas corpus. In such an event an opportunity for a full inquiry was afforded by the application being transmitted to a local magistrate's court for inquiry and report. Neither the right to apply for a writ of habeas corpus nor the procedure described above were in any way affected during a state of emergency as those rights were embodied in the Constitution and could not be overridden by any emergency regulation.

117. In recognition of the fact that measures adopted during the state of emergency should be in proportion to the crisis itself, the emergency regulations promulgated on 20 June 1989 had been revised in June 1993. The revised regulations were designed solely to deal with the situation arising from armed insurrection or terrorism. With a view to dealing with allegations of disappearances, non-issuance of receipts at the point of arrest had been made an offence. All arrests were required to be notified promptly to the Human Rights Task Force which monitored the arrest, detention and welfare of detainees and also maintained a register of detainees.

118. The independence of judges and lawyers was vital for a functioning democracy. To ensure an independent judiciary the existence of an equally strong and independent legal profession should be ensured. If judges and lawyers were components of the same system and liable for exposure to similar hazards, there was no rationale in providing different mechanisms to protect their rights so as to ensure their independence. Any interference in the

proper discharge of their respective duties deserved protection as an interference with the administration of justice, and the law of contempt should be made applicable to any such interference.

119. He wished to refer to an unfortunate trend that seemed to be developing in Sri Lanka; some members of the legal profession were attempting to misrepresent the true state of affairs in the country and to mislead such prestigious international NGOs as the International Commission of Jurists in order to further their personal motives.

120. It was with deep regret that his country noted references in the June 1993 report of the Centre for the Independence of Judges and Lawyers to allegations made by two lawyers, Mr. Gunasekera and Mr. Kodagoda.

121. The report alleged that Mr. Gunasekera had been harassed by threatening telephone calls for appearing for the petitioners in habeas corpus applications. It was a bogus allegation - many other lawyers regularly appeared in similar habeas corpus applications but none of them had ever complained of being threatened. Although Mr. Gunasekera had informed the Chief Justice and the Attorney-General of the threats, he had refused to make a complaint to the police or initiate an investigation and had declined protection, choosing instead to seek international assistance.

122. Mr. Kodagoda was an acting magistrate and it had been claimed in the report that his house had been burnt down. In fact it had not been burnt down and the allegation made by Mr. Kodagoda in his complaint to the police was that there had been several attempts to burn his house. It was strange that he alone of magistrates dealing with errant police officers should have been visited upon with such reprisals.

123. It was his delegation's fervent hope that that type of false allegation would serve to open the eyes of the international community to attempts made by so-called responsible persons to further their own ends at the expense of the image not only of their country, but also of those who unsuspectingly espoused their cause.

124. Mr. MICHAEL (Observer for Ethiopia) said that the question of administration of justice and the human rights of detainees was of special interest to his delegation. Ethiopia had embarked upon the transition to democracy, the legal foundation for which was the Transitional Period Charter, which stated that individual human rights should be respected fully and without any limitation whatsoever.

125. Fundamental changes were being introduced in order to uproot the corrupt and unjust legal system of the past. In order to strengthen the independence and impartiality of the judiciary, judges of high moral integrity, social standing and calibre were being appointed and at the same time a substantial budget was being allocated to increase their salaries and improve their working conditions.

126. Another important development related to the exercise of the right of self-determination by the nations and nationalities of Ethiopia. For the first time in the history of the country, most of the nations and

nationalities could establish their own judicial system at the provincial level and could present claims, defend and adjudicate cases in their own languages.

127. Equally radical measures were being taken to improve the conditions of detainees. After 17 years of repression, torture, arbitrary detention and execution, no one at present could be detained for more than 48 hours without a court order. The writ of habeas corpus which had been suspended by the previous regime was now reinstated. The police and prosecution services were being restructured and trained at the provincial and national levels. A Special Prosecutor's Office had been established to conduct investigations and institute proceedings against any person alleged to have committed gross violations of human rights during the previous regime. Four hundred political detainees, including ministers and high-ranking military officials of the previous regime, had been released on bail by the Central High Court at the end of February 1993.

128. The task of building democracy in a country impoverished by civil war, famine, repression and widespread corruption was a challenging one. His Government fully endorsed the Vienna Declaration and Programme of Action which stated among other things that "Democracy, development and respect for human rights and fundamental freedoms were interdependent and mutually reinforcing" (A/CONF.157/23). The process of building institutions to establish an independent and impartial judiciary required time, finance and expertise, and since Ethiopia was in a period of political and economic transition it needed the support and understanding of the international community to achieve those ends.

129. In conclusion, he wished to point out that the adoption and ratification by the transitional Government of the International Covenant on Civil and Political Rights and the International Covenant on Social, Economic and Cultural Rights demonstrated its commitment to human rights and fundamental freedoms. He also wished to point out that his Government sincerely welcomed constructive criticism in that regard.

The meeting rose at 1 p.m.